



Headquarters Policy Flash

FLASH 2001-07

DATE: February 26, 2001
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **Federal Acquisition Circulars (FACs) 97-22 and 97-23**

SUMMARY: This Policy Flash summarizes the items in FACs 97-22 and 97-23, which were published in the Federal Register on January 10, 2001, at 66 FR 2116 and January 18, 2001, at 66 FR 5346, respectively. Contracting personnel should review the details of each item in the full text of the FACs.

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A. Federal Acquisition Circular (FAC) 97-22

The following five items are in **FAC 97-22**, which was published in the Federal Register on January 10, 2001, at 66 FR 2116. The FAC is available via the Internet at <http://www.arnet.gov/far>.

1. Definitions

Effective Date: March 12, 2001

Applicability: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after March 12, 2001.

This final rule clarifies the applicability of definitions used in the FAR; eliminates redundant or conflicting definitions, and makes definitions easier to find.

This final rule-

- ➔ Relocates definitions of terms that are used in more than one FAR part with the same meaning to 2.101;
- ➔ Relocates other definitions of terms to the “Definitions” section of the highest level FAR division (Part, subpart, or section) where the term as defined is used. For example, if a term was defined in a FAR section, but the term is used as defined in another section of the subpart, then the definition was moved to the “Definitions” section of that subpart;
- ➔ Clarifies that a term, defined in FAR 2.101, has the same meaning throughout the FAR unless the context in which the term is used clearly requires a different meaning; or unless another FAR part, subpart, or section provides a different definition for the particular part, subpart, or section;
- ➔ Adds cross-references to definitions of terms in FAR 2.101 that are defined differently in another part, subpart, or section of the Far; and
- ➔ Makes technical corrections throughout the FAR.

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2. Applicability, Thresholds, and Waiver of Cost Accounting Standards Coverage

Effective Date: January 10, 2001

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after January 10, 2001.

The interim rule published as Item VIII of FAC 97-18 (65 FR 36028, June 6, 2000) is converted to a final rule without change. This rule amends FAR Subpart 30.2, Cost Accounting Standards (CAS) Program Requirements, and the FAR clause at 52.230-1, Cost Accounting Standards Notices and Certification, to implement Section 802 of the National Defense Authorization Act for fiscal Year 2000 (Pub. L. 106-65) and the CAS Board's final rule, Applicability, Thresholds, and Waiver of Cost Accounting Standards Coverage.

The FAR rule revises policies affecting which contractors and subcontractors must comply with CAS by doing the following -

- Removing the requirement at FAR 52.230-1, Cost Accounting Standards Notices and Certification, that a contractor or subcontractor must have received at least one CAS-covered contract exceeding \$1 million ("trigger contract") to be subject to "full CAS coverage." The CAS Board added a new "trigger contract" dollar amount of \$7.5 million at paragraph (b) (7) of 48 CFR 9903.201-1, CAS applicability, which is already referenced at FAR 30.201-1;
- Revising FAR 30.201-4(b), disclosure and consistency of cost accounting practices, and FAR 52.230-1 to increase the dollar threshold for full CAS coverage from \$25 million to \$50 million; and
- Revising the CAS waiver procedures and conditions at FAR 30.201-5.

3. Advance Payments for Non-Commercial Items

Effective Date: March 12, 2001

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after March 12, 2001.

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This final rule amends the FAR to permit federally insured credit unions, in addition to banks, to participate in the maintenance of special accounts for advance payments. The rule will only affect contracting officers that provide contract financing using advance payments for non-commercial items.

4. Part 12 and Assignment of Claims

Effective Date: March 12, 2001

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after March 12, 2001.

This final rule amends the FAR to correct an inconsistency between two clauses related to the assignment of claims. FAR 52.232-36, Payment by Third Party, prohibits a contractor from assigning its rights to receive payment under the contract if payment is made by a third party, such as when a Governmentwide commercial purchase card is used. This clause is cited in the contract clause at FAR 52.212-5 that addresses terms and conditions required to implement statutes or Executive orders for commercial items.

FAR 52.212-4, Contract Terms and Conditions-Commercial Items, addresses assignment of claims but does not include the third party prohibition. This rule revises FAR 52.212-4(b) to add the prohibition.

5. Clause Flowdown-Commercial Items

Effective Date: January 10, 2001

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after January 10, 2001.

This final rule amends the clause at FAR 52.244-6, Subcontracts for Commercial Items, to revise the listing of clauses the contractor must flow down to subcontractors. The rule revises the listing to add the clause at FAR 52.219-8, Utilization of Small Business Concerns. In addition, the rule adds language to inform contractors that they may flow down a minimal number of additional clauses to subcontractors to satisfy their contractual obligations.

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B. Federal Acquisition Circular (FAC) 97-23

The following item is in **FAC 97-23**, which was published in the Federal Register on January 18, 2001, at 66 FR 5346. The FAC is available via the Internet at <http://www.arnet.gov/far>.

Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

Effective Date: February 20, 2001

Applicability Date: The FAR coverage, as amended by this rule, is applicable to solicitations issued on or after February 20, 2001.

This final rule amends the FAR to implement Executive Order 13126, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor.

The FAR is amended by adding a new FAR subpart on prohibition of acquisition of products produced by forced or indentured child labor (Subpart 22.15), adding a new certification regarding knowledge of child labor for listed end products (FAR 52.212-3 and 52.222-18), and adding a clause at 52.222-19, which requires cooperation with authorities if the solicitation included the certification provision and provides remedies for violations relating to use of forced or indentured child labor.

Questions concerning this Flash should be directed to Denise Wright at (202) 586-6217 or via e-mail at denise.wright@pr.doe.gov.


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cc: PPAG Members